

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALLEY THEATRE . C.A. NO. H-19-1987
VS. . HOUSTON, TEXAS
HANOVER INSURANCE CO. . AUGUST 16, 2019
2:28 P.M. to 2:41 P.M.

TRANSCRIPT of INITIAL CONFERENCE
BEFORE THE HONORABLE LEE H. ROSENTHAL
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: MR. CHANLER A. LANGHAM
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MS. ELISE MILLER
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FOR THE DEFENDANT: MR. CHAD W. SCHREIBER
MS. PERI HAYRIYE ALKAS
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OFFICIAL COURT REPORTER: MS. KATHY L. METZGER
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1 P R O C E E D I N G S

2 *THE COURT:* All right. Alley Theatre. Go ahead and
3 state your appearances, please.

4 *MR. LANGHAM:* Chanler Langham for the plaintiff, Alley
1 4 : 2 8 : 4 8 5 Theatre.

6 *MR. SCHREIBER:* Chad Schreiber on behalf of the
7 defendant, Hanover Insurance Company.

8 *MS. MILLER:* Elise Miller also for the Alley.

9 *MR. ROSS:* Jonathan Ross for the Alley.

1 4 : 2 9 : 0 0 10 *THE COURT:* All right.

11 *MS. ALKAS:* And Peri Alkas for the insurance company.

12 *THE COURT:* All right. Well, it looks like what we
13 need are, I think, cross -- it's a contract interpretation
14 issue, and it looks like what we need are something like cross
1 4 : 2 9 : 1 9 15 motions or what, summary judgment or --

16 *MR. LANGHAM:* Yes, Your Honor. With whatever it is
17 that we'd like to call it, I think that it's going to be a
18 motion on a legal issue as to whether the flood limit applies
19 to the various claims.

1 4 : 2 9 : 3 3 20 *THE COURT:* Basically we're talking about a \$3 million
21 limit or a \$125 million limit?

22 *MR. LANGHAM:* That is correct, Your Honor.

23 *THE COURT:* Okay. That's the question?

24 *MR. LANGHAM:* That is the question --

1 4 : 2 9 : 4 9 25 *THE COURT:* All right. So how about --

14:29:49 1 *MR. LANGHAM:* So the parties --

2 *THE COURT:* -- cross motions on that issue?

3 *MR. LANGHAM:* So the parties met and conferred, and we

4 have a proposed schedule --

14:29:54 5 *THE COURT:* All right.

6 *MR. LANGHAM:* -- for the Court, which is --

7 *THE COURT:* I have it.

8 *MR. LANGHAM:* -- going to be the last couple of pages

9 of Document 7.

14:30:00 10 *THE COURT:* No, I've got it. So basically does

11 anybody need to add any new parties or amend at this point?

12 *MR. LANGHAM:* Not that I know of.

13 *THE COURT:* All right.

14 *MR. SCHREIBER:* Your Honor, as far as amendments, we

14:30:16 15 are contemplating an amendment of our pleading -- of our

16 answer, but as far as amending to add parties, we are not

17 considering that.

18 *THE COURT:* When will you need to -- what would you

19 need to amend to assert?

14:30:24 20 *MR. SCHREIBER:* Just with respect to clarifying some

21 of the coverage positions or coverage arguments that we have.

22 We just would like to further clarify --

23 *THE COURT:* Do you need to do that in a pleading?

24 *MR. SCHREIBER:* I'm sorry, Judge?

14:30:42 25 *THE COURT:* Do you need to do that in the pleadings or

1 is that something you can do in the motions?

2 *MR. SCHREIBER:* We could probably do it in a motion,
3 Judge.

4 *THE COURT:* All right.

5 *MR. LANGHAM:* And, Your Honor, on the briefing, we
6 have discussed this in the past, but I think that the logical
7 way to do it is for the Alley Theatre to brief the issue
8 related to income coverage in our opening brief and for the
9 insurance company to brief the issue of sprinkler leakage and
10 named storm in their opening brief, so that we are not all
11 entering the opening brief on the same issues.

12 *THE COURT:* I agree that -- I think that one of you
13 ought to go first on both issues, and then the other party file
14 a cross motion and a response to the moving party's arguments
15 on both issues.

16 *MR. LANGHAM:* I see.

17 *THE COURT:* And then there will be a third wave in
18 which the non-movant will respond. I don't know if I'm going
19 to need any replies, but at that point we will have oral
20 argument. So I think what we're better off doing is that. So
21 who's going to -- rather than have you both file on different
22 issues, I would rather one of you file on both issues and the
23 other party respond on both issues and cross move on both
24 issues, so that you're -- you've got the same ships that you're
25 going to be addressing. Hopefully they won't pass in the

14:32:47 1 night.

2 *MR. LANGHAM:* We haven't yet discussed that.

3 *THE COURT:* Let's look out how it would draft out.

4 *MR. LANGHAM:* Okay.

14:32:56 5 *THE COURT:* So who would like to move first on both
6 issues?

7 *MR. LANGHAM:* When you say "both issues," we're
8 talking about -- we have three really --

9 *THE COURT:* We have the business loss insurance.

14:33:04 10 *MR. LANGHAM:* Yes.

11 *THE COURT:* We have the question of the physical
12 claims caused by the sprinkler leakage issue, and then we have
13 the named storm issue?

14 *MR. LANGHAM:* Yes, Your Honor.

14:33:24 15 *THE COURT:* Anything else? Those are the three
16 issues, right?

17 *MR. SCHREIBER:* Those are the issues. There is one
18 additional issue that we've discussed within the initial round
19 of summary judgments, and that relates specifically to the
14:33:36 20 calculation of a BI loss per the policy language. Essentially
21 there's two aspects of our defense, which is --

22 *THE COURT:* But that's okay. That's still within the
23 business umbrella window.

24 *MR. SCHREIBER:* Exactly, Judge.

14:33:50 25 *THE COURT:* So do you want to move for summary first

1 on the part of the Alley and -- or declaratory judgment? I
2 think it's really a summary judgment motion, although it -- I
3 don't think you -- you know the case better than I do and how
4 you would package it.

5 *MR. LANGHAM:* Your Honor, we believe that limiting the
6 issue to whether or not the flood limit applies to these
7 various requests for coverage is the easiest way to address
8 this.

9 *THE COURT:* I agree. I agree. And do you want to go
10 first?

11 *MR. LANGHAM:* Absolutely, Your Honor.

12 *THE COURT:* Okay. P to file declaratory judgment on
13 legal issues of contract interpretation governing whether the
14 flood limit applies, right?

15 *MR. LANGHAM:* Yes, Your Honor.

16 *THE COURT:* And when will you be ready to file that?

17 *MR. LANGHAM:* We had proposed October 4th.

18 *THE COURT:* That sounds fine to me. And then the
19 defendant will file its response and cross motion --

20 *MR. SCHREIBER:* That's correct, Judge.

21 *THE COURT:* -- legal application. And then on
22 November 18 the plaintiff will file its response to the
23 defendant's --

24 *MR. LANGHAM:* Your Honor, if we are having to respond
25 to a cross motion, I may want to request more than two weeks

14:36:08 1 since --

2 *THE COURT:* That's fine. I'll give you another --

3 *MR. LANGHAM:* Three should be sufficient.

4 *THE COURT:* How about November 29?

14:36:16 5 *MS. ALKAS:* Not Thanksgiving.

6 *THE COURT:* Well, given the holidays, why don't I give
7 you until December 6th.

8 *MR. LANGHAM:* Thank you, Your Honor.

9 *THE COURT:* All right. And then we will have oral
14:37:08 10 argument on December 13 -- actually we're going to have oral
11 argument January, early January, January 10, 2020, at 8:30 a.m.

12 If I were to rule that the case was subject to a
13 \$3 million cap, it would likely settle, right?

14 *MR. LANGHAM:* Yes, Your Honor.

14:37:46 15 *THE COURT:* Or you go up and seek an interlocutory
16 appeal?

17 *MR. LANGHAM:* Yes. I think that would really take
18 things away from what -- from the claim we're asserting.

19 *THE COURT:* And if I was to rule the other way, 125
14:38:03 20 million applied, what would the -- can you forecast the likely
21 impact?

22 *MR. LANGHAM:* For the named storm issue, there would
23 really be little to do, because that only applies to property
24 damage.

14:38:19 25 If it applies to the business income, we've

1 already provided lots of information on that, but there might
2 be some depositions that they want to have and they may want to
3 have some other motions related to donations that the Alley
4 received, if that's not already covered within this cross
5 motion that we're contemplating doing in October.

6 For sprinkler leakage, there may be some issues
7 related to causation and some experts that may have to come in
8 in that regard. But really lots of information has already
9 been provided in the initial disclosures and through our more
10 than a year, almost two years exchange of information up to
11 this point. So there's not a great deal of discovery to do,
12 and we think that we can do that on pretty tight deadlines.

13 *THE COURT:* All right.

14 *MR. SCHREIBER:* And, Your Honor, I would just add,
15 with respect to the first round of summary judgments, assuming
16 the Court were to rule as the Court previously indicated, that
17 may give us an opportunity then to come together again and
18 maybe attempt a mediation or something like that, since the
19 parties' respective positions would have been affected by the
20 Court's ruling. But I think counsel is accurate in that
21 obviously after the rulings with respect to the sprinkler
22 leakage and the named storm, the causation and then the damages
23 issues would then be subject to discovery and expert
24 depositions, et cetera.

25 *MR. LANGHAM:* Yes, Your Honor. The parties have

14:40:06 1 anticipated even in the proposed schedule that immediately
2 after we receive a decision from you, that we would go to
3 mediation and try and get this resolved.

4 *THE COURT:* All right. So, I'm not going to impose
14:40:20 5 any dates after the oral argument, because I think that
6 everything after that depends, like a veritable roll of
7 dominoes, on what happens shortly after that.

8 All right. You'll get a copy of this. That
9 means you don't have to spend the money on experts beyond what
14:40:41 10 you've already done. I assume that you have a whole lot of
11 this information already in the bag.

12 *MR. LANGHAM:* Yes, Your Honor.

13 *THE COURT:* Have you already exchanged it?

14 *MR. LANGHAM:* No.

14:40:49 15 *THE COURT:* Why don't you?

16 *MR. LANGHAM:* Well, we have information that we have
17 exchanged but nothing related to expert work.

18 *THE COURT:* Well, have you exchanged information on
19 the amount of damages that you are seeking under the various
14:41:04 20 categories?

21 *MR. LANGHAM:* Absolutely.

22 *THE COURT:* All right. Good. Very good. Anything
23 else that we can do today then?

24 *MR. LANGHAM:* No, Your Honor.

14:41:13 25 *MR. SCHREIBER:* I think that's it, Your Honor.

1 *THE COURT:* Do the parties agree to submit any
2 attorneys' fees issues to the Court after other issues are
3 resolved?

4 *MR. LANGHAM:* We do, Your Honor.

5 *MR. SCHREIBER:* Yes, Your Honor.

6 *THE COURT:* Very good. Thank you. You are all
7 excused.

8 *MR. LANGHAM:* Thank you.

9 *MS. MILLER:* Thank You.

10 *MR. ROSS:* Thank you, Your Honor.

11 *MR. SCHREIBER:* Thank you, Judge.

12 *(Concluded at 2:41 p.m.)*

13 * * *

14 I certify that the foregoing is a correct transcript from the
15 record of proceedings in the above-entitled cause, to the best
16 of my ability.

17
18 /s/ Kathy L. Metzger
19 Kathy L. Metzger
20 Official Court Reporter
21
22
23
24
25

9-13-2019
Date